STATE OF ALABAMA

ALABAMA PUBLIC SERVICE COMMISSION
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APR 19 1996

April 18, 1996

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street N
Washington, D.C. 20554

DOCKET FILE COPY ORIGINAL

Re: CC Docket No. 96-61, Notice of Proposed Rulemaking, In the Matter of Policy and Rules Concerning the Interstate, Interexchange Marketplace

Implementation of Sections 254(g) of the Communications Act of 1934, as amended

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Dear Mr. Caton:

Enclosed please find for filing in the above captioned proceeding, an original and twelve copies of the comments of the Alabama Public Service Commission in the above referenced docket.

Please indicate your receipt of this filing on the additional copy and return to the undersigned in the enclosed self-addressed, postage prepaid, envelope. Thank you.

Respectfully,

Mary E. Newmeyer

Mary E. Newmeyer
Federal Affairs Adviser

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of	)	
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Policy and Rules Concerning the	)	CC Docket No. 96- 61
Interstate, Interexchange Marketplace	)	
	)	
Implementation of Section 254(g) of the	)	
Communications Act of 1934, as amended	)	

COMMENTS OF THE ALABAMA PUBLIC SERVICE COMMISSION

Mary E. Newmeyer,
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April 18, 1996

SUMMARY

The Alabama PSC maintains that it is absolutely necessary to continue the filing of tariffs to protect consumers. The threat of price coordination and price discrimination may well be greater after the entry of the BOCs into the interexchange market. With this increased threat, a mandatory detariffing scheme is not only imprudent but dangerous because it could facilitate price discrimination by failure of the regulators to recognize such discrimination due to insufficient information. The complexity of the services offered by the telecommunications industry create difficulty for even informed customers to know of the various rates charged or the services offered. Mandatory detariffing is clearly not in the public interest.

We strongly believe the separation requirements for independent LECs whose non-dominant affiliates provide interstate, interexchange services are even more necessary under requirement of the 1996 Act and must be maintained. The 1996 Act requires both the Commission and the state commissions to ensure there is no cross subsidization of competitive services by noncompetitive services. The separation requirements are a safeguard that will help both federal and state regulators fulfill this mandate. Since this requirement already exists it adds no new requirements on these carriers.

The Alabama PSC believes that the geographic rate averaging requirement of the 1996 Act does not preempt states action with respect to intrastate interexchange services. We recognize the necessity of rate averaging in Alabama and have always required that intrastate interexchange rates be averaged. We agree that states would have to apply intrastate rates on a basis which is consistent with the policy of rate averaging.

The entry of the BOCs will not ensure competition nor will it provide a solution to tacit price coordination. The power over the telecommunications market wielded by the BOCs could, in fact, reduce the amount of competition by driving smaller carriers out of the market. The threat of price coordination and price discrimination may well be greater after the entry of the BOCs into the interexchange market.

We see no benefit in relaxing the CPE unbundling requirements, however, we do see the opportunity for price discrimination if carriers are allowed to bundle CPE and interexchange services. Unbundling remains necessary to provide clear price signals for consumers. Bundled services do not provide clear price signals and limit consumers ability to make informed decisions.

BEFORE THE
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FCC 96-123

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Implementation of Section 254(g) of the Communications Act of 1934, as amended	)	

COMMENTS OF THE
ALABAMA PUBLIC SERVICE COMMISSION

The Alabama Public Service Commission offers the following comments pursuant to the Federal Communications Commission's above referenced Notice of Proposed Rulemaking (NPRM) issued March 25, 1996.[1]

I. Introduction

The Federal Communications Commission (Commission) proposes in this NPRM to promote competition by reducing or eliminating existing regulations that may no longer be in the public interest in the increasingly competitive interexchange market. These actions include proposals: to adopt a mandatory detariffing policy for domestic services of non-dominant interexchange carriers; to eliminate the prohibition against bundling customer premises equipment with the provision of interstate interexchange services by non-dominant carriers; and, to consider whether to reduce or eliminate the separation requirements for non-dominant treatment of local exchange carriers in their provision of certain interstate, interexchange services.

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[1] The Alabama PSC's comments will address the entire NPRM instead of splitting the issues into two sets of comments as is permitted by the Commission in this docket.

The NPRM also reexamines other aspects of the Commission's oversight of the interstate interexchange market including the possible need to more narrowly focus the definitions of relevant products and geographic markets to reflect current and future market conditions. The NPRM addresses residential pricing including allegations of tacit price coordination and tariff related issues that would remain relevant if the Commission determines not to forbear from requiring tariff filings. The NPRM additionally proposes rules to implement the 1996 Act's provisions relating to geographic rate averaging and rate integration.

The Alabama Public Service Commission (Alabama PSC) offers the following comments on some of the actions proposed by the Commission in this NPRM.

II. Discussion

A: TARIFF FILING REQUIREMENTS

The (NPRM) states that requiring non-dominant interexchange carriers to file tariffs for domestic offerings is not necessary for the protection of consumers of interexchange services. The Alabama PSC does not agree with this assumption. The protection of the consumer from unfair charges and practices is dependent upon the regulator having sufficient information to determine the fairness of an interexchange carrier's prices for services. The objective of the regulator has always been to prevent price discrimination against the consumer. Price discrimination involves charging prices for technically similar commodities that cannot be accounted for by the costs of production, distribution, transportation, storage, risk, or uncertainty.

The tariffs exist for the benefit of the regulator and the customer of the carrier. The filed tariff is a public reference available to the consumer who wants to compare the prices of the various carriers. The tariff is knowledge about the carrier which is available through the regulator to

customers and potential customers of that carrier. Tariffs exist currently because the prices charged to customers are not readily apparent to the customer when he reads his bill. The complicated structure of rates charged by the carrier dictate that the regulator has a copy of those rates and prices on file in order to answer questions by customers. Even fairly well informed customers are not aware of the various rates charged by the carrier. Also, the practices of some carriers do not ensure that customers can make informed decisions based upon information provided by the carriers. A carrier may advertise one rate but in fact charge another rate. The inquiry of a customer to the regulator concerning such rates may have to go unanswered if the regulator has no rate reference on file for that carrier.

The NPRM states that a tariff filing requirement for non-dominant carriers harms consumers by undermining the development of rigorous competition by encouraging price coordination. Notwithstanding the Federal Communications Commission's (FCC's) declaration that AT&T is no longer a dominant carrier, the fact remains that the interexchange industry is dominated by three large carriers which control over 80 percent of the market. The potential for collusion among these large carriers exists with or without a tariff on file at the FCC. The existence of a tariff does not encourage nor discourage price collusion. The existence of the tariff provides the regulator with the information necessary to determine the possibility of price collusion. Without a tariff the regulator must consistently poll the carriers to determine the existence of price collusion.

In its Report and Order concerning operator services and pay telephones[2], the FCC stated that the impetus for the Commission's proceedings on operator service issues was the set of problems that arose with the entry of competitors into the operator services marketplace following the

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[2] CC Docket Number 91-35 adopted July 11, 1991

divestiture of AT&T. The Commission further stated that widespread consumer dissatisfaction over the rates and practices of many operator service providers led the Commission to address the problems. The proceedings resulted in a set of rules for operator service providers that included the requirement to file informational tariffs.

The problems associated with operator service providers emphasize that the existence of competition does not necessarily provide protection for the consumer. Unfair practices continued in spite of the fact that customers had alternatives available to them for operator services. Even with competition there is the potential for unfair practices and charges. A large number of individual consumers were hurt before the level of complaints reached sufficient volume to get the attention of the Commission. Had these providers been required to file even informational tariffs from the beginning, the unfair charges and practices would have been identified or not have developed at all. Reliance on the Section 208 complaint process to "remedy any irrational carrier conduct or aberration"[3] does not give sufficient protection to consumers. Not every class of consumer is aware or knowledgeable of the Commission's Section 208 complaint process.

The NPRM states that requiring tariff filings takes away a carrier's ability to make efficient responses to changes in demand and costs and removes incentives for competitive price discounting. The carrier's ability to make efficient responses to changes in demand and costs depends upon that carrier's ability to collect and analyze that information in a timely manner and is not dependent upon the tariff filing or the date of that filing. Collection of demand and cost data is dependent upon the frequency with which such data is measured. If a carrier is collecting the minutes of use and revenue for customers on a monthly basis, his actions will be based upon monthly data. Analysis of that data

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[3] NPRM, fn 77

dictates the carrier's response to a competitor's price change. The carrier will not respond to another carrier's price change unless such a change is deemed to affect the demand for a carrier's services. Thus, the carrier's response to demand and cost data dictate the filing of the tariff and not vice versa.

The argument that the tariff filing imposes administrative costs upon carriers attempting to file new offerings is not convincing in that those administrative costs associated with filing the tariff are a minor portion of the administrative costs incurred with instituting a new rate or a new offering. The requirement that a tariff be filed will not be decisive in determining whether a rate will be changed or whether a new service will be offered Thus, a tariff filing requirement poses no threat to competition or innovation in the interexchange market.

With the complexity of the telecommunications market the consumer still relies upon the regulator to interpret the tariffs and protect him from unfair practices. We believe that forbearance from filing tariffs by interexchange carriers is unwarranted and risky especially at the time when so many changes are occurring in the industry. We believe that the Federal Communications Commission should at the very least delay forbearance from tariff filings until after the entry of the Bell Operating Companies (BOCs) into the interexchange market. The power wielded by the BOCs could completely change the interexchange market. At present three carriers control 80 percent of the toll market. With the power of the BOCs, their entry into the interexchange market could force these three carriers into a minor role in the interexchange market. The regulator needs to observe dynamics of the interexchange market with the BOCs before taking actions such as forbearance from tariff filings.

B. SEPARATION REQUIREMENTS

In the Competitive Carrier proceeding the Commission imposed separation requirements on

independent LECs whose affiliates were classified as non-dominant interexchange carriers. The Commission determined that to qualify for non-dominant treatment the affiliate providing interstate interexchange services must 1) maintain separate books of account, 2) not jointly own transmission or switching facilities with its affiliated exchange telephone company, and 3) acquire any services from its affiliated exchange telephone company at tariffed rates, terms, and conditions. The Commission also stated that any interstate service offered directly by an independent LEC rather than through a separate affiliate would be regulated as a dominant carrier.

The Commission stated in its Fifth Report and Order that if the BOCs were allowed to offer interstate interLATA services, the Commission would regulate the BOCs as dominant carriers until the determination of the degree of separation necessary for the BOCs or their affiliates to qualify for non-dominant regulation. In the BOC Out-of-Region NPRM, the Commission tentatively concluded that the requirements imposed upon independent LECs providing interexchange services presented a useful model upon which to base, on an interim basis, oversight of BOC provision of out-of-region interstate, interexchange services.

We maintain that the separation requirements for independent LECs whose non-dominant affiliates provide interstate interexchange services should be retained in order to prevent cost shifting or cross subsidization. We also believe that the same separation requirements should apply for the BOCs in order to qualify for non-dominant treatment in the provision of out-of-region interstate interexchange services.

The separation requirements provide checks and balances upon those local exchange companies (both independents and BOCs) whose affiliates provide interstate interexchange services. Without the separation requirements the Commission risks allowing anticompetitive cross

subsidization and cost shifting. Without clearly defined separation requirements the Commission will be unable to determine whether cross subsidization is occurring.

The 1996 Act requires both the FCC and the state commissions to insure there is no cross-subsidization of competitive services by noncompetitive ones[4]. The separations vehicle provides a stronger assurance of protection against cross subsidization. The interexchange services market is much more competitive than the exchange market at this time and will remain so for some time in the future. Economic theory supports shifting cost from the competitive services to the noncompetitive services. The separation requirements help to guard against such cost shifting. The separation requirements also ensures that carriers can compete on an equal basis in the interexchange market and will help maintain the competition that has developed. The three existing separation requirements should be retained. These safeguard requirements already are in place and should not be weakened, especially in this period of uncertainty and transition.

C. RATE AVERAGING

The Telecommunications Act of 1996 requires that the Commission adopt rules to require the rates charged by providers of interexchange services to subscribers in rural and high cost areas shall be no higher than rates charged by each such provider to its subscribers in urban access. The Act also requires that a provider of interstate interexchange telecommunications services shall provide such services to its subscribers in each state at rates no higher than rates charged to subscribers in any other state. This plainly states that rates for interstate domestic interexchange services shall be geographically averaged.

We believe that the geographic rate averaging requirement of the Act does not preempt state

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[4] 1996 Act, Section 254 (k)

action with respect to intrastate interexchange services. We agree that the states would have to apply intrastate rates on a basis which is consistent with the policy of rate averaging. We do not believe that competitive conditions exist currently or shall exist whereby geographic rate averaging is not necessary. Without rate averaging rural and high cost areas will be ignored by the carriers. Carriers will compete for the areas which provide a greater return. Thus competition will harm rural and high cost areas without rate averaging. To guarantee true rate averaging, the FCC should require that carriers offer discount plans ubiquitously. If the carriers do not offer discounts to rural and high cost areas the carrier is actually charging higher rates for rural and high cost areas.

We do not believe that certification by a carrier that it is in compliance with rate averaging will guarantee carrier's compliance. The fact that the FCC currently requires rate averaging but carriers do not offer discounts to high cost and rural areas indicates that the carriers cannot be relied upon to police themselves. The only way that the FCC can police carriers is to maintain a tariff filing requirement and a mechanism to suspend tariffs if the carrier's tariff is not in compliance with the FCC's rules and regulations. The additional requirements of the 1996 Act, that were adopted to ensure the benefits of competition and new technology reached all users, clearly indicate the intent to maintain regulatory oversight and monitoring of the transition to competitive markets.

We believe that the requirements for rate averaging should be uniform throughout the industry without specific requirements for one carrier. The entry of the BOCs into the interexchange market will change the entire market so that AT&T may no longer be the industry leader. At that juncture to hold AT&T to stricter rules than other carriers would be unwise. This also applies to other commitments. We believe that the impact of the BOCs on the interexchange market will be significant and that all carriers should be required to meet the same standards.

D. TACIT PRICE COORDINATION

The NPRM stated in paragraph 81 that by allowing for competitive entry into the interstate interexchange market by facilities based BOCs and others, the 1996 Act provides the best solution to tacit price coordination. However, the history of the interexchange market since divestiture provides evidence that true interexchange competition does not currently exist.

There are over 500 toll carriers in the United States. As of the third quarter of 1995, AT&T collected 56 percent; MCI collected 17.9 percent, and Sprint collected 8.5 percent of the toll revenues in the United States. These three companies accounted for over 80 percent of the toll market share for the entire United States. Thus, with nearly twelve years of competition three carriers control over 80 percent of the toll market. The other 500 carriers account for only 17.6 percent of the toll revenues for the entire Untied States.

The entry of the BOCs will not ensure competition nor will it provide a solution to tacit price coordination. The power over the telecommunications market wielded by the BOCs may reduce the amount of competition in the interexchange market by driving smaller carriers out of the market. In fact, the fates of AT&T, MCI, and Sprint may be jeopardized by the entry of the BOCs into this market.

Thus, the threat of price coordination and price discrimination may well be greater after the entry of the BOCs into the interexchange market. With this increased threat, a mandatory detariffing scheme is not only imprudent but also may facilitate price discrimination by failure of the regulators to recognize such discrimination due to insufficient information.

.E BUNDLING OF CUSTOMER PREMISE EQUIPMENT

In 1980 the Commission adopted a rule prohibiting common carriers from bundling the

provision of customer premises equipment (CPE) with the provision of common carriers telecommunications services[5]. The Commission concluded that the bundling of telecommunications services with CPE could force customers to purchase unwanted CPE in order to obtain necessary transmission services, thus, restricting customers' choices. For these very reasons bundling CPE with telecommunications services is not justifiable.

We believe that any savings in transaction costs to customers by bundling CPE is more than offset by the lack of proper pricing information. The intent of unbundling was to send a clear signal to the customer regarding the prices of goods and services. To bundle these goods and services will confuse the customer about the appropriate prices for these goods and services. The existence of competition alone will not clarify this signal if none of the competitors is required to unbundle goods and services. We see no benefit in relaxing the unbundling requirement; however, we do see the opportunity for price discrimination and loss of choices for the consumer if carriers are allowed to bundle CPE and interexchange services.

As competition in interexchange and exchange services increases, there is even a greater need to maintain the unbundling of CPE and service. The consumer can not make an informed decision about what service or provider to use when they can not get the information as to the cost of the unbundled elements of these packaged offers. This frustration already exists for informed consumers in the cellular market who want to compare the costs of services and CPE separately and cannot get prices quoted for each element separately by some service providers.

We do not believe that the entry of the BOCs into the market for interexchange services will substantially alter the impact of unbundling CPE. The fact remains that the price signal sent through

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[5] 47 C.F.R. Section 64.702 (e)

unbundling is understandable as opposed to an easily misunderstood signal through bundling of goods and services.

The same basis that applies to the requirements in the 1996 Act to offer interconnection service elements on an unbundled basis applies to the issue of unbundling CPE. The buyer should not have to buy goods or services he does not want or need in order to get either the good or service he wants. The lack of a requirement to offer CPE and interexchange service on an unbundled basis will harm competition and consumers choices not promote them.

We believe that the intent of the 1996 Act is to retain those mechanisms which have promoted competition in the interexchange market not to regress based upon the assumption that competition exists and those mechanisms are no longer useful.

III. Conclusion

The Alabama PSC offers the above comments on issues raised in the NPRM. We support the growth of competition in the interexchange market and other telecommunication markets, but we recognize that competition takes time to develop. We believe that continued oversight and monitoring by regulators is necessary through a transition period to allow competition to develop. Removing requirements too soon will be more of a deterrent to competition than an incentive.

Respectfully submitted,

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Dated April 18, 1996